THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11116 OF 2007

DATED: 12-06-2007

Between :

Smt. D. Ganga Bai … Petitioner

And

1. The Chief Manager, Andhra Bank,
   Bhainsa, Adilabad District., and
   Another. .. Respondents

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11116 OF 2007

ORDER :

This writ petition is filed seeking a Mandamus declaring the public auction scheduled on 1-6-2007 under the auction notice dated 25-4-2007 as arbitrary and illegal.

It is not in dispute that the son of the petitioner by name D. Krishna Murthy was granted financial assistance by the 1st respondent Bank on depositing title deeds in respect of the house property bearing Door No.4-3-214/1 to 5, Bhainsa, Adilabad District by way of security. The petitioner claims title to the said house property by inheritance from her late husband. It is alleged that the title deeds of the said house property were deposited by her daughter-in-law by impersonating the petitioner. Having come to know about the fraud committed by her son and daughter-in-law, the petitioner lodged a criminal complaint which is pending before the Judicial Magistrate of First Class, Bhainsa under Sections 420 and 120-B of IPC vide C.C.No.184 of 2003. The petitioner also moved an application in C.C.No.184 of 2003 seeking summons to the Bank – the 1st respondent herein to produce the documents relating to the secured assets allegedly deposited with them and the said petition was allowed by order dated 20-12-2006.

In the meanwhile, the 1st respondent Bank filed O.A.No.103 of 2002 before the Debts Recovery Tribunal, Hyderabad for recovery of the amounts due under the loan account availed by the petitioner's son making the petitioner herein also a party defendant. The said O.A. was ordered and Recovery Certificate dated 11-10-2006 was issued by the Tribunal for recovery of a sum of Rs.23,85,963-65 ps. Pursuant thereto, Demand Notice dated 18-12-2006 was issued to the petitioner along with other defendants in O.A.No.103 of 2002 calling upon to pay the amount due under the Recovery Certificate within 15 days, failing which the recovery shall be made in accordance with the provisions of Sections 25 to 29 of the Recovery of Debts Due

to Banks and Financial Institutions Act, 1993 (for short, 'the RDB Act, 1993') and the Rules made thereunder. Since there was no response, the 2nd respondent – Recovery Officer published the impugned sale notice dated 25-4-2007 in the local dailies proposing to conduct open auction of the mortgaged properties on 1-6-2007. The property in question i.e., House No.4-3-214/1 to 5 has been described as Lot No.3 in the said sale notice. Aggrieved by the said action of the 1st respondent Bank, this writ petition is filed contending inter alia that since the proceedings in C.C.No.184 of 2003 are pending before the Court of the Judicial Magistrate of First Class, Bhainsa wherein it was alleged that the title deeds of the property in question were deposited by the daughter-in-law of the petitioner by impersonation, it is not open to the 1st respondent Bank to take any steps for sale of the said property in which the petitioner is claiming half share.

I have heard the learned Counsel for both the parties and perused the material on record.

At the outset, it is to be noted that the fact that after conducting due enquiry, the Debts Recovery Tribunal, Hyderabad had issued the Recovery Certificate dated 11-10-2006 is not in dispute. Admittedly the writ petitioner is also one of the defendants and consequently jointly and severally liable for payment of the amounts due. Neither the petitioner nor the other defendants preferred any appeal and the Recovery Certificate issued in O.A.No.103 of 2002 has become final. In the circumstances, the Recovery Officer is entitled to proceed to recover the amount of debt specified in the Certificate by any of the modes specified under Section 25 of the RDB Act, 1993 including attachment and sale of immovable property with the defendants. Section 26 of the Act specifically provides that it shall not be open to the defendants to raise any dispute or objection as to the correctness of the amounts specified in the Certificate or otherwise before the Recovery Officer.

In the circumstances, the mere pendency of proceedings in

C.C.No.184 of 2003 in the Court of Judicial Magistrate of First Class, Bhainsa does not obliterate the liability of the petitioner under the Recovery Certificate dated 11-10-2006. It is also relevant to note that the petitioner did not choose to make either her son or daughter-in-law as party respondents to this writ petition though serious allegations of impersonation were made. At any rate, it is for the petitioner to work out the appropriate remedy before the appropriate forum so far as the half share claimed by her in the house property in question by initiating proceedings against the other sharers, but no Mandamus can be granted restraining the respondents from enforcing the Recovery Certificate granted by the Tribunal having jurisdiction following due process of law.

Even the contention raised by the learned Counsel for the petitioner that the 2nd respondent – Recovery Officer had committed an error in issuing a single sale notice on the basis of different Recovery Certificates issued by the Debts Recovery Tribunal does not deserve consideration in a writ proceeding since the Second Schedule to the Income-Tax Act, 1961 the provisions of which are made applicable for the purpose of recovery of debts due under the RDB Act, 1993 provides that such questions relating to execution of the recovery certificate shall be determined only by the Recovery Officer. Hence, in case the petitioner is aggrieved it is for her to avail the remedy as provided under the Statute and the writ petition under Article 226 of the Constitution of India cannot be maintained.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 12–06-2007

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